

Berger & Montague, P.C.

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November 12, 2009

VIA EMAIL ONLY

Elizabeth T. Bernard
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, D.C. 20005

**RE: In re Wellbutrin XL Antitrust Litig.
Our File No. 08304-000**

Dear Elizabeth:

This responds to your November 6 letter ("Letter") to the Direct Purchaser Plaintiffs regarding Rochester Drug Co-Operative, Inc. ("RDC") and Meijer, Inc. and Meijer Distribution Inc.'s (collectively, "Meijer") (together, "Plaintiffs") responses to Defendants SmithKline Beecham Corporation and GlaxoSmithKline plc's (collectively, "GSK") First Request for Production of Documents ("Plaintiffs' Rule 34 Responses").

Preliminarily, I note that Plaintiffs' Rule 34 Responses were served on July 20, 2009, almost four (4) months ago. Yet, this is the first time GSK has informed Plaintiffs that GSK has any issue whatsoever with Plaintiffs' Rule 34 Responses. GSK has listened in on the "meet and confer" calls between Plaintiffs and the Biovail defendants, but has said nothing.

Nevertheless, we are happy to meet and confer with GSK concerning Plaintiffs' Rule 34 Responses. Let us know some dates and times that work for you.

There are some misconceptions in your letter that require correction. For instance, your claim that RDC has produced a mere "two documents" in addition to purchase data is not correct. We do not know where you get that idea. Meijer has produced documents and transactional data and Meijer's document collection and production is continuing.

To respond to the many other questions and assertions in your letter, please see below, following your numbering. We only provide a response where appropriate, which accounts for the skipped numbers.

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2. Requests for Production Nos. 1 and 2

RDC confirms that its production of purchase data is complete. Meijer confirms that its data production is complete and includes data from Frank W. Kerr Co.

4. Requests for Production Nos. 5 and 6

Plaintiffs stand on their objection to producing irrelevant downstream information. Even if Plaintiffs were ordered to produce downstream sales information, Plaintiffs would be unable, pursuant to HIPPA, to produce patient names, a request that in any event is irrelevant to this litigation.

6. Request for Production No. 9

You state that RDC has not, to date, produced documents "relating to its decision to purchase Wellbutrin XL and generic Wellbutrin XL." Letter at 4. That is incorrect. RDC has produced any and all such documents, to the extent they exist. Meijer too has and will produce such documents in its ongoing production. Plaintiffs stand on their objections to production of irrelevant downstream information.

7. Request for Production No. 10

Plaintiffs confirm that they are not withholding documents.

8. Request for Production No. 11

Thank you for specifying the types of documents GSK is looking for. Based on your list, Plaintiffs are able to report that they do not have any documents (other than those produced in this litigation) related to generic forms of Wellbutrin XL that relate to development, composition, bioequivalence, application to the FDA, related litigation or litigation settlements, market entry, or sale.

9. Request for Production No. 12

Plaintiffs are able to report that they do not have any of the documents sought by this Request.

10. Request for Production No. 13

RDC is able to report that it does not have any of the documents sought by this Request. Meijer stands on its objections to this request.

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11. Request for Production No. 14

RDC is able to report that it does not have any of the documents sought by this Request. Meijer has already produced this information. If Meijer were to locate any other responsive documents, it would produce them, too, in its continuing production.

12. Request for Production No. 15

Plaintiffs are able to report that they do not have any of the documents sought by this Request.

13. Request for Production No. 17

GSK appears to have ignored Plaintiffs' response to this Request. Any testimony is subject to protective orders entered by the courts in prior cases. Its disclosure would violate those orders.

14. Request for Production No. 18

RDC is able to report that it does not have any of the documents sought by this Request. Meijer has responded that it will produce all non-privileged responsive documents concerning any conviction concerning fraud or dishonesty, to the extent such documents exist. Meijer operates nearly 200 stores and has approximately 54,000 employees, and GSK's request for documents "relating to each instance in which a government entity or agency has accused, charged, or convicted [Meijer] of a crime or other violation of law" (emphases added) is overbroad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence.

17. Request for Production No. 25

To the extent that Meijer has any documents from Frank W. Kerr Co. responsive to these requests, it will produce those documents on the same basis on which Meijer is making its own production. Plaintiffs are able to report that they do not have documents relating to any of the other entities named in this Request related to this Litigation and the subject matter of any claims in this Litigation, any assignment of any claims of this Litigation, any communications regarding Wellbutrin XL, generic Wellbutrin XL or other Antidepressants, any communications or documents related to certifying a class of direct or indirect purchasers, market definition and competition for pharmaceutical products.

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18. Request for Production No. 29

Plaintiffs are not withholding any nonprivileged documents.

* * *

Again, let us know when you would like to speak.

Very truly yours,

BERGER & MONTAGUE, P.C.

/s/Peter Kohn

By: _____
Peter R. Kohn

PRK:st
no encl.
c: All counsel